

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

CONTINENTAL INDEMNITY COMPANY,)	
)	
Plaintiff,)	Case No. _____
)	
vs.)	Douglas County, Nebraska
)	Court Case No. D 01 CI 19 0007788
IPFS OF NEW YORK, LLC,)	
)	
and)	NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1332(a).
)	
IPFS CORPORATION,)	(DIVERSITY JURISDICTION)
)	
Defendants.)	

NOTICE OF REMOVAL OF CIVIL ACTION

Defendants IPFS of New York, LLC, and IPFS Corporation (hereinafter collectively “IPFS” and “Defendants”), pursuant to 28 U.S.C. § 1332(a), hereby remove this action from Douglas County, Nebraska where it is currently pending as Case No. D 01 CI 19 0007788, to the United States District Court for the District of Nebraska. This is a civil action over which this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because Plaintiff and Defendants are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs. The Defendants removing the case to this Court request trial in Omaha pursuant to Nebraska local rule 40.1(b).

I. INTRODUCTION

1. On October 2, 2019, an action was commenced in the District Court of Douglas County, Nebraska, entitled *Continental Indemnity Company, an Iowa Corporation v. IPFS of New York, LLC, a Limited Liability Company and IPFS Corporation*, Case No. D 01 CI 19 0007788 (the “Civil Action”). The Civil Action is still pending in the District Court of Douglas County, Nebraska. In the Civil Action, Plaintiff Continental Indemnity Company (“Plaintiff”)

asserts one cause of action against the Defendants: declaratory judgment, seeking to determine the parties' rights and obligations under a premium finance agreement.

2. The Defendants have not appeared in the Civil Action or answered or otherwise responded to Plaintiff's Complaint in the Civil Action. Defendants will file their response to this Court consistent with Fed. R. Civ. P. 81(c).

II. TIMELINESS

3. Defendants were served with a copy of the Summons and Complaint in the Civil Action on October 4, 2019 and October 7, 2019. Pursuant to 28 U.S.C. § 1446(b)(1) requires the notice of removal for any civil action to be filed within 30 days after either the receipt of the initial pleading setting for the claim for relief or after the service of summons, whichever is shorter. Additionally, any civil action removed based solely on diversity jurisdiction cannot be removed more than one year after the commencement of the action unless the court deems appropriate. The Notice of Removal is timely because it is filed within 30 days of Defendants' receipt of the Petition and within one year of the commencement of this action.

III. JOINDER

4. Pursuant to § 1446(b)(2)(A), all Defendants join in the removal of this action.

IV. JURISDICTION

5. This Court has original jurisdiction over the Civil Action pursuant to 28 U.S.C. § 1332 because Plaintiff and Defendants are citizens of different states. For purposes of diversity jurisdiction, "a corporation's citizenship is the state of its principal place of business and its state of incorporation." *GMAC Commercial Credit LLC v. Dillard Dep't Stores, Inc.*, 357 F.3d 827, 828 (8th Cir. 2004); *see also Weathermon v. Disabled Am. Veterans*, 15 F. Supp. 2d 940, 941 (D. Neb. 1998). A limited liability company, for diversity of citizenship, is considered a citizen

where each of its members are citizens. *OnePoint Solutions, LLC v. Borchert*, 486 F.3d 342, 346 (8th Cir. 2007); *E3 Biofuels, LLC v. Biothane, LLC*, 6 F. Supp. 3d 993, 998 (D. Neb. 2014).

6. Plaintiff Continental Indemnify Company is a corporation incorporated in Iowa with its principal place of business in Omaha, Nebraska. Defendant IPFS of New York, LLC is a limited liability company whose sole member is IPFS Corporation. IPFS Corporation is incorporated in Missouri with its principal place of business in Kansas City, Missouri.

7. In addition to complete diversity, removal pursuant to 28 U.S.C. § 1332 requires the amount-in-controversy to exceed \$75,000 exclusive of interest and costs. The agreement at the heart of the dispute between the Plaintiff and the Defendant concerns an excess of \$750,000. Therefore, the court has diversity jurisdiction over the Civil Action.

V. VENUE

8. Pursuant to 28 U.S.C. § 1441(a), a civil case eligible for removal must be removed to the United States district court “embracing” the place where such action is pending. Removal venue exists in the United States District Court for the District of Nebraska and is proper in this Court because the District Court of Douglas County, Nebraska is within the District of Nebraska.

VI. STATE COURT ACTION

9. As required by 28 U.S.C. § 1146(a), true and correct copies of all relevant pleadings filed to date in the Douglas County, Nebraska action are attached hereto as **Exhibit A**.

10. There are no motions currently pending before the District Court of Douglas County in this matter.

11. Written notice of the filing of this Notice of Removal will be promptly served on all parties and a copy will be filed with the Clerk of the District Court of Douglas County,

Nebraska. A copy the Notice of Removal to Federal Court to be filed in Douglas County is attached hereto as **Exhibit B**.

12. Defendants hereby reserve any and all rights to assert any and all defenses to Plaintiff's Petition, including but not limited to failure to state a claim upon which relief can be granted.

WHEREFORE, Defendants IPFS of New York, LLC and IPFS Corporation respectfully give notice that the above-titled action is removed and transferred forthwith from the District Court of Douglas County, Nebraska to the United States District Court for Nebraska.

LATHROP GAGE LLP

/s/ Mark J. Parachini

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CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2019, a copy of the above and foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, and was also served via U.S. Mail to the following:

Jeffrey A. Silver
10805 Old Mill Road
Omaha, Nebraska 68154
Attorney for Plaintiff

/s/ Mark J. Parachini

Attorney for Defendants IPFS